

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED
JUN 21 2017
Clerk, U.S. District Court
District Of Montana
Missoula

TOM MCGOVERN,

Plaintiff,

vs.

TOM WOODS, SHERIE BILODEAU,
CONNIE WINNER, DAVID
PENTLAND, and JOHN AND JANE
DOES #1-20,

Defendants.

CV 16-89-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Findings and Recommendations on June 1, 2017, recommending dismissal of Defendant David Pentland and Count five of Plaintiff Tom McGovern's Complaint ("McGovern"). The parties failed to timely object to the Findings and Recommendation, and, as a result, have waived their right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v.*

Syrax, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted). Because the parties are familiar with the factual background of this case, it will not be repeated here.

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston's conclusion that Defendant David Pentland and Count five of the Complaint should be dismissed. Count five, which is the only count asserted against Defendant Pentland, fails to state a cognizable due process claim and is otherwise barred under the doctrine discussed in *Heck v.*

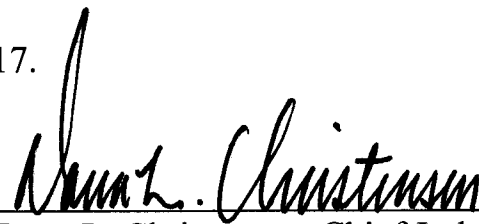
Humphrey, 512 U.S. 477, 486–487 (1994). Consequently, because Count five is essentially challenging the fact or duration of McGovern's confinement and is brought under section 1983, the claim, as well as Defendant Pentland, must be dismissed from this case. *Wilkinson v. Dotson*, 544 U.S. 74, 79-81 (2005) (writ of habeas corpus is proper vehicle to obtain release from unlawful confinement).

Accordingly, there being no clear error in Judge Johnston's Findings and Recommendations, IT IS ORDERED that:

(1) Judge Johnston's Findings and Recommendations (Doc. 7) are ADOPTED IN FULL; and

(2) Count Five of the Complaint and Defendant David Pentland are DISMISSED WITH PREJUDICE.

Dated this 21st day of June, 2017.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

Dana L. Christensen, Chief Judge
United States District Court